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ABSTRACT

At many colleges and universities in the United States, the mystique of tenure has provided tenured faculty, even incompetent and inactive faculty, a protected status. Dismissing a tenured faculty member requires a specified cause for termination, and is often one of the most difficult personnel actions that a college can take. Dealing with incompetent faculty requires a strong evaluation process and campuswide understanding of policy and procedures. This article provides a step-by-step case study of a college dean's actions to dismiss a faculty member, based on low class enrollments, poor evaluations of classes by the division chair and dean of instruction, poor student evaluations, and failure to remediate teaching and job deficiencies. The steps include: (1) an initial meeting with the dean and follow-up memorandum stating problems that might be accountable for low enrollments; (2) in-class evaluations by administrators; (3) official notice from the board of trustees of the "need to remediate," follow-up meetings, and evaluation activities to monitor improvement; (4) recommendation for dismissal and dismissal notice; (5) just cause and appeal procedures; and (6) the arbitration hearing. Lessons to be learned from the case study are highlighted. (JSP)

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Action

A NEWSLETTER DEDICATED TO THE IMPROVEMENT OF INSTRUCTION AND ADMINISTRATION
IN AMERICAN AND CANADIAN SCHOOLS AND COLLEGES.

How to Dismiss a Tenured Faculty Member

By Hans A. Andrews

Do tenured faculty members ever get fired? A review of the literature might lead one to say, "No!" There are many colleges and universities in the United States where the *mystique* of tenure has provided tenured faculty a "protected" status. Governing boards and administrators have been deterred from taking action except under extreme conditions.

In a recent study of tenured evaluation practices in 305 community colleges in the 19-state North Central Accrediting region, it was found that 27 percent of 199 responding colleges reported no formal evaluation existed (Licata & Andrews, 1990). In 41 percent of the colleges reporting evaluation systems, the effectiveness of such tenured faculty evaluation was highly questioned by top instruction deans and vice presidents. It is quite obvious to any serious observer of faculty evaluation practices that the absence and low effectiveness of evaluation procedures and practices provides a sanctuary for incompetent or prematurely retired faculty.

Lovain (1984) referred to the termination of a tenured faculty member as "one of the most difficult personnel actions that a college or university can take." He also noted that the "requirement of specified cause for dismissal" was at the heart of the tenure system. Lovain went on to show that if proper procedures are followed a college or university may dismiss a tenured faculty member for

So, what methods should college administrators follow when dealing with incompetent tenured faculty?

adequate cause. His review of court cases showed the courts to reject "almost all recent challenges by tenured faculty to their dismissals for stated cause...despite heightened legal protection of tenure." This finding points directly opposite to popular beliefs about court support of faculty dismissal cases.

So, what methods should college administrators follow when dealing with incompetent tenured faculty? Here is a fictitious, but comprehensive, case study of the dismissal of a tenured college teacher for incompe-

tence. In reading it, be aware the faculty member was evaluated in both his in-class and out-of-class professional teaching responsibilities. The college's tenured faculty evaluation provided for unannounced in-classroom evaluations of tenured faculty by instructional administrators a minimum of two times during a five-year period. The faculty leaders and college administrators had jointly reviewed and strengthened the evaluation process and procedures the previous year. The board of trustees adopted the recommended changes in policies and procedures. All faculty were apprised of the system and changes that had been approved. All of the above are crucial ingredients to an effective policy.

In February of 1988 the instructional dean apprised the instructor of the college's concern over low enrollments in his classes and the problem of not being able to provide him with a full teaching load even though he was being paid for a full load. The problem of low enrollments, while not cited as a charge against the instructor, did lead to in-classroom evaluations in succeeding months. The instructor had been

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advised that his teaching methods would be evaluated. The dean followed up his meeting with a memorandum that suggested the instructor was in part accountable for lack of enrollments in his classes. The dean's memo noted:

1. the instructor had not been engaging in professional activities for several years;

2. his appearance was poor and there was a personal hygiene concern;

3. his part-time work might be a problem (drawing time away from his professional duties);

4. brief week-by-week outlines showing where he was in his course syllabus for each course would be needed; and,

5. he should prepare a plan for self-improvement to provide to the division chairperson.

In-Class Evaluations

The division chairperson and dean of instruction conducted in-class visitations in early March. The content in both evaluations was very direct and critical:

We are sorry to have to tell you that your in-class preparation and performance was much worse than we could have imagined.

You have spent eight weeks of the spring semester teaching American Literature after 1865 in your Literature 201 course when it should have been taught in the Literature 200 course. This is inexcusable! These courses are articulated with all four-year colleges and universities under the agreement that we must teach the same course as they do in terms of course description and syllabus.

Handouts, tests, and other materials students are given in your classes are very old and show an almost complete lack of effort to update, revise, and keep a current preparation for these classes.

I would highly suggest that you start immediately to put the type of preparation, time, and effort into your full-time job at this college that we expect from all instructors. If your outside job draws you away from the time you need to do the kind of work necessary to retain your job at this college, you

should give utmost consideration to making a change.

Your neglect of all major aspects of your job, preparation, audio-visual, proper presentation of material (both content and proper placing of material), conferences, courses and testing, put you in a very critical position.

Your division chairperson and I will plan to discuss these concerns with you in the near future.

Moving to a Notice to Remediate

The administration felt that the noted teaching and job deficiencies warranted an official notification of "need to remediate" from the board of trustees. The college president sent a board resolution and list of deficiencies to the instructor after official board action was taken (see box on page 3).

A follow-up meeting was scheduled for the instructor and the division chairperson and dean within a week of the board notice. The local American Federation of Teachers president also was present. The dean reported in his follow-up letter to the instructor that he deemed the meeting not to be very productive as the instructor continued to deny the allegations in his letter of deficiencies from the board of trustees.

Further in-class evaluations followed and the written and verbal reports saw both positive and negative progress on the cited deficiencies needing remediation. In addition, daily objectives and handouts to students were returned to the instructor after being deemed "too general" and not answering the board remediation demands.

The instructor was asked to spend the upcoming summer months updating his course materials and to not teach during the summer. They were to be completed and turned in by the start of classes in the fall semester, but outlines were not received. Monitoring of the list of deficiencies continued into the fall through both in-class visits and by written memos pressing the instruc-

tor to provide the written materials that were now long overdue. Seven months following the board of trustee notice to remediate, the administration had not received the updated course outlines. These were finally produced after a face-to-face meeting in early November, but were unsatisfactory in content and not in a weekly format as had been requested. He was given until the first week in January, 1990 to continue to prepare them in the format that had been requested.

Classroom evaluations during October 1989 specified the following deficiencies still existed:

1. A basic problem is still a lack of planning and preparation;

2. Wandering from topic to topic and dealing with minute and relatively unimportant details;

3. The instructor became bogged down in organization the second half of the class period;

4. Some material was presented in a haphazard manner.

In a summary statement of four in-class evaluations, the dean reported:

You are once again directed to read and re-read these comments and make some effort to properly plan for these classes. The students are still the losers with your half-hearted efforts to date. It has been noted that you still work many outside hours on another job while your work at the college continues to show much neglect.

In a late fall semester evaluation of the instructor's class in the college's off-campus program some six weeks later, the dean and division chairperson once again noted in their report that he was observed providing a lecture that was "well behind the course schedule outline, disorganized, hurried, and tantamount to useless." The division chairperson's evaluation went on to state:

My observations today come on the heels of the decent evaluation of December 7, 1989. I can only conclude that he is not willing to devote the consistent time and energy that it takes to be a professional. Our close scrutiny this semester has forced

Notice to Remediate

You are being notified of the Board of Trustees action in passing a formal notice of remediation. The following is a list of deficiencies that you must address in the very near future:

1. Lack of preparation for class lecture, determining of daily objectives, and sharing of these with your students.

The necessary steps in the resolution of this deficiency is to prepare daily, weekly, and semester outlines so you can adequately cover the material necessary for your courses. Students are to have course outlines updated and passed out that tell them what to expect in each day's lecture and readings, testing review and testing dates, dates they will review tests, etc. You must properly plan.

2. Disregard of the course syllabus in teaching of your courses, and poorly prepared course outlines.

You must teach the material that is outlined for the Literature 200 and 201 courses during the proper semester. These are transfer courses to other colleges and you are under obligation to guarantee teaching of the courses as they are articulated for transfer to four-year colleges and universities. Course outlines need to be improved and reflect better objectives for these Literature courses.

3. Poor, outdated audiovisual support to lecture.

Your complete use of audiovisuals needs to be reviewed. Overlays on the overhead projector have been evaluated as very poor and almost non-functional. Much improvement needs to be made immediately in this area.

4. Tests and handouts are dated.

Your tests have been evaluated to be old, updated by hand, and with markings by students who have previously used them. Some of your handouts are considered so old they are difficult to copy and are now most difficult to read. This is one more area in which recent planning and lack of effort is very evident. Future materials should show marked improvements.

5. Lack of professional upgrading.

By your own admission in a recent communication to the administration, you have not even applied for a professional conference in your field since 1969. This is almost unheard of in any level of education. You were unable to list any professional journal in your field of American Literature to which you subscribe, read, or have used. Not one professional activity initiated by yourself was listed after 1979. You must take your professional responsibilities in this area much more seriously starting now.

6. Conclusion.

In our judgment, the defects and deficiencies set forth above are both clearly stated, easy to understand, and reasonable to ask you to correct. The defects and deficiencies cited can only be removed, however, with a much stronger commitment to your full-time job at this college than your performance suggests you have been giving it for some length of time. There should be no question that such a performance in your job is not conducive to students enrolling in and/or being counseled by college staff to enroll in your classes. The continuing low enrollments in your classes appear to be somewhat interrelated with this evaluation of your performance.

some instances of creditable teaching upon him, but when the evaluation was unexpected, he reverted to a slipshod performance.

I do not know where to go from here. The instructor was notified by the Board Resolution to remove these and other deficiencies in March. Today, nearly nine months later, I find that many of them are still in existence.

Recommendation for Dismissal and Dismissal Notice

This final in-class evaluation during the fall semester, along with other continuing deficiencies throughout the semester, led the dean and division chairperson to conclude that a *recommendation to terminate* should be made. The board of trustees was appraised of the continuing problems with the instructor. They instructed the administration and board attorney to prepare the appropriate legal document to present to the board at their February, 1990 board meeting. They voted to dismiss the instructor and presented him with a "Notice of Charges and Bill of Particulars" with the following six charges:

- I. You have disregarded the official college course syllabus in teaching your course.
- II. You have failed to prepare for and properly manage your lectures.
- III. You have failed to use effective evaluation and testing procedures for student learning.
- IV. You have refused to follow administrative and Board directives to improve the quality of the audiovisual materials used in your classes.
- V. You have failed to engage in any significant attempts to upgrade your competence as a professional.
- VI. You have been persistently negligent in carrying out your duties as a faculty member.

Just Cause and Appeal Procedure

State statutes vary in terms of the procedure necessary if a tenured teacher wishes to appeal the action of the board. In our example, the law provides for a hearing officer to listen to evidence from both the faculty member and representatives of the board of trustees in order to reach a final and binding decision. Substantial grounds, rather than trivial grounds, must be proven. The statute also states that the board must prove its charges by a preponderance of the evidence. In this situation, the instructor chose to use an arbitrator and a hearing was set for both sides to present their case and evidence.

The Arbitration Hearing

The hearing officer listened to testimony from both sides in a two-day hearing. Key points of the officer's findings included:

1. Concerning Charge I, it would have been possible subsequent to March 8, 1989 to reallocate the time allotted to each topic as requested by the administration; the instructor did not correct the situation in the 1989 fall semester.
2. Concerning Charge II, the arbitrator saw the evaluations by administrators for the prison class as a significant indication that the instructor failed to properly prepare for and manage his lectures.
3. The arbitrator found the evidence for Charge III consisted of what was observed primarily during the class sessions the evaluators visited. He did not, therefore, believe that this charge had been proven, although this did not mean that he believed the instructor did prepare the students adequately and did cover tests properly. He just failed to find conclusive evidence in support of the Board's charge.
4. The arbitrator, upon close review of materials presented, concluded that he had not been sup-

plied with sufficient evidence to support a finding to uphold Charge IV.

5. Concerning Charge V, the arbitrator was convinced from testimony from both the instructor and the Board that the instructor had not made a significant effort to maintain his professional competence. He pointed out that despite the warning from the Board in March 1989, the instructor did not remedy the situation.
6. Charge VI centered on the failure of the instructor to meet board requests in a timely manner and the persistence of being late in holding office hours. The arbitrator referred to this last as a "catch-all" charge and did not see it as adding much to the Board's other charges.

The arbitrator read favorable letters from five students and heard favorable testimony on the instructor's behalf by three teachers and two students. While he was impressed by this support on behalf of the instructor, he did not give as much weight to this evidence as he did to the negative findings in the administrative evaluations, noting "It seems normal for teachers to support another teacher with whom they have been associated for some time even though the teacher may be guilty of the charges made against him by the employer."

He also noted that some student evaluation forms supporting the instructor were given in small classes where the anonymity of students was not fully protected.

The Board was reprimanded on the point that they failed to follow their own policy of holding a conference with the instructor after each evaluation. One such omission led to this reprimand. The arbitrator did not feel that this procedural error was of sufficient importance to serve as grounds to set aside the dismissal of the instructor.

The arbitrator concluded that the instructor did not remedy the defi-

ciencies that he was first given in March, 1989, and restated as Charges I, II, and V accompanying the February, 1990 dismissal resolution of the Board sent to the instructor. The arbitrator further concluded that the Board had just cause to dismiss the instructor. The Board decision was, therefore, upheld and the appeal of the instructor denied.

The instructor's appeal to the Circuit Court level was also denied after the filing of briefs and the evidence summarized by the arbitrator was reviewed. No appeal to the Appellate Court was made.

Summary

Several key lessons are illustrated in this case:

1. Tenure does not guarantee a life-time position to a faculty member if competence in one's job becomes eroded.

2. Proving incompetence is a lengthy and tedious process. In-class evaluation by administrative supervisors carries a high degree of weight in such cases.

3. Student evaluations are suspect and unlikely to carry the same weight in arbitration as carefully conducted supervisory evaluations. The formalized weight given to student evaluations by colleges using both administrative and student evaluations should be much lower in Board policies than that given to administrative evaluation.

4. The formal notice to remedy is a most important step to be taken in trying to improve an instructor. It also provides an excellent baseline with which to judge improvements and subsequent evaluations.

5. In-class observations, course syllabus, semester course outlines, grade books, copies of examinations, and records of individual faculty development efforts are all interrelated in determining a faculty member's level of continued competence to provide an expected tenure level of quality instruction.

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